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2001



HOUSE BILL 01-1090

BY REPRESENTATIVE(S) Spradley, Boyd, Coleman, Grossman, Hefley, Jahn, Jameson, Johnson, Kester, Larson, Lawrence, Lee, Mace, Madden, Miller, Rippey, Romanoff, Stengel, Swenson, Tapia, and Weddig; also SENATOR(S) Owen, Dyer (Durango), Evans, Hillman, Musgrave, Reeves, Taylor, and Teck.

CONCERNING AN INCREASE IN THE INCOME TAX CREDIT FOR THE DONATION OF A PERPETUAL CONSERVATION EASEMENT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-22-522 (1), (2), (3), (4), (5) (b) (III), (6), (7) (a), and (7) (b), Colorado Revised Statutes, are amended, and the said 39-22-522 (7) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

39-22-522. Credit against tax - conservation easements. (1) For purposes of this section, "taxpayer" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, A PARTNERSHIP, S CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY, ESTATE, OR TRUST THAT DONATES A CONSERVATION EASEMENT AS AN ENTITY, AND A PARTNER, MEMBER, AND SUBCHAPTER S SHAREHOLDER OF SUCH PASS-THROUGH ENTITY.

Capital letters indicate new material added to existing statute; dashes through the words indicate deletions from existing statutes and such material not part of act.

(2) For income tax years commencing on or after January 1, 2000, AND, WITH REGARD TO ANY CREDIT OVER THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. THE AMOUNT OF THE CREDIT SHALL NOT INCLUDE THE VALUE OF ANY PORTION OF AN EASEMENT ON REAL PROPERTY LOCATED IN ANOTHER STATE.

(3) In order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall file WITH THE DEPARTMENT OF REVENUE AT THE SAME TIME AS THE TAXPAYER FILES A RETURN FOR THE TAXABLE YEAR IN WHICH THE CREDIT IS CLAIMED A SUMMARY OF a qualified appraisal, as defined in ~~26 C.F.R. 1.170A-13 (c) (3) (1988)~~, with the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed. 26 C.F.R. 1.170A-13 (c) (4) (1998); HOWEVER, IF REQUESTED BY THE DEPARTMENT, THE TAXPAYER SHALL SUBMIT THE APPRAISAL ITSELF.

(4) (a) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to ONE HUNDRED PERCENT OF THE FIRST ONE HUNDRED THOUSAND DOLLARS OF the fair market value of the donated portion of such conservation easement in gross when created, ~~The amount of the credit allowed pursuant to this subsection (4) shall not exceed one hundred thousand dollars per donation.~~ AND FORTY PERCENT OF ALL AMOUNTS OF THE DONATION IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS; EXCEPT THAT, IN NO CASE SHALL THE CREDIT EXCEED TWO HUNDRED SIXTY THOUSAND DOLLARS PER DONATION. IN NO EVENT SHALL A CREDIT CLAIMED BY A TAXPAYER FILING A JOINT FEDERAL RETURN, OR THE SUM OF THE CREDITS CLAIMED BY TAXPAYERS FILING MARRIED SEPARATE FEDERAL RETURNS, EXCEED THE DOLLAR LIMITATIONS OF THIS PARAGRAPH (a).

(b) In the case of a partnership, S corporation, or other similar

pass-through entity that donates a conservation easement as an entity, the amount of the credit allowed pursuant to subsection (2) of this section shall be allocated to the entity's partners, MEMBERS, or shareholders in proportion to the partners', MEMBERS', or shareholders' distributive shares of income from such entity. THE TOTAL AGGREGATE AMOUNT OF THE CREDIT ALLOCATED TO SUCH PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT EXCEED TWO HUNDRED SIXTY THOUSAND DOLLARS, AND, IF ANY REFUND IS CLAIMED PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION, THE AGGREGATE AMOUNT OF THE REFUND AND THE CREDIT CLAIMED BY SUCH PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT EXCEED FIFTY THOUSAND DOLLARS FOR THAT INCOME TAX YEAR.

(5) (b) (III) If any refund is claimed pursuant to subparagraph (I) of this paragraph (b), then the aggregate amount of the refund and amount of the credit used as an offset against income taxes for that income tax year shall not exceed ~~twenty~~ FIFTY thousand dollars for that income tax year. IN THE CASE OF A PARTNERSHIP, S CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY THAT DONATES A CONSERVATION EASEMENT AS AN ENTITY, IF ANY REFUND IS CLAIMED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE AGGREGATE AMOUNT OF THE REFUND AND THE CREDIT CLAIMED BY THE PARTNERS, MEMBERS, OR SHAREHOLDERS OF THE ENTITY SHALL NOT EXCEED THE DOLLAR LIMITATION SET FORTH IN THIS SUBPARAGRAPH (III) FOR THAT INCOME TAX YEAR. Nothing in this subparagraph (III) shall limit a taxpayer's ability to claim a credit against taxes due in excess of ~~twenty~~ FIFTY thousand dollars in accordance with subsection (4) of this section.

(6) A taxpayer may claim only one tax credit under this section per income tax year; EXCEPT THAT A TRANSFEREE OF A TAX CREDIT UNDER SUBSECTION (7) OF THIS SECTION MAY CLAIM AN UNLIMITED NUMBER OF CREDITS. A taxpayer who has carried forward or elected to receive a refund of part of the tax credit in accordance with subsection (5) of this section shall not claim an additional tax credit under this section for any income tax year in which the taxpayer applies the amount carried forward against income tax due or receives a refund. ~~Neither~~ A taxpayer who has transferred a credit to a transferee pursuant to subsection (7) of this section ~~nor the transferee to whom the credit was transferred~~ shall NOT claim an additional tax credit under this section for any income tax year in which the transferee uses such transferred credit.

(7) For income tax years commencing on or after January 1, 2000, a taxpayer may transfer all or a portion of a tax credit granted pursuant to subsection (2) of this section to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:

(a) The taxpayer may only transfer such portion of the tax credit as the taxpayer has ~~not~~ NEITHER applied against the income taxes imposed by this article NOR USED TO OBTAIN A REFUND;

(b) The taxpayer may transfer A PRO-RATED PORTION OF the tax credit to more than one transferee; ~~except that in no event shall a credit be transferred in an amount of less than twenty thousand dollars;~~

(e) TO THE EXTENT THAT A TRANSFEREE PAID VALUE FOR THE TRANSFER OF A CONSERVATION EASEMENT TAX CREDIT TO SUCH TRANSFEREE, THE TRANSFEREE SHALL BE DEEMED TO HAVE USED THE CREDIT TO PAY, IN WHOLE OR IN PART, THE INCOME TAX OBLIGATION IMPOSED ON THE TRANSFEREE UNDER THIS ARTICLE, AND TO SUCH EXTENT THE TRANSFEREE'S USE OF A TAX CREDIT FROM A TRANSFEROR UNDER THIS SECTION TO PAY TAXES OWED SHALL NOT BE DEEMED A REDUCTION IN THE AMOUNT OF INCOME TAXES IMPOSED BY THIS ARTICLE ON THE TRANSFEREE.

(f) THE TRANSFEREE SHALL SUBMIT TO THE DEPARTMENT A FORM APPROVED BY THE DEPARTMENT. THE TRANSFEREE SHALL ALSO FILE A COPY OF THE FORM WITH THE ENTITY TO WHOM THE TAXPAYER DONATED THE CONSERVATION EASEMENT.

SECTION 2. Effective date - applicability. (1) This act shall take effect January 1, 2003, unless a referendum petition is filed during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution. If such a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall take effect on the specified date only if approved by the people.

(2) The provisions of this act shall apply to conservation easements donated on or after the earliest applicable effective date of this act.

Doug Dean
SPEAKER OF THE HOUSE
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Stan Matsunaka
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APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO